

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHAN MARK MATELIC,

Defendant-Appellant.

---

FOR PUBLICATION

December 21, 2001

9:00 a.m.

No. 220221

Recorder's Court

LC No. 87-002517

Updated Copy

March 15, 2002

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

WILDER, J. (*dissenting in part.*)

Defendant appeals from a lower court order denying his motion, filed pursuant to MCL 791.234(10), for judicial determination of cooperation. I would affirm the lower court's denial of the motion and find that (1) the word "cooperated," when examined in context with the remaining language of MCL 791.234(10), is unambiguous, (2) MCL 791.234(10) imposes a temporal limitation on any trial court finding of cooperation by a prisoner and requires that "cooperation" must have actually occurred before a prisoner is eligible for early parole under that provision, and (3) remand is not warranted in this case because defendant failed to establish eligibility for early parole under MCL 791.234(10). Accordingly, I respectfully dissent from subsections B, C, and D of § II of the majority opinion. *Ante* at \_\_\_\_.

I

As noted by the majority, this case requires us to interpret MCL 791.234(10) as a matter of first impression. Statutory interpretation is a question of law that we review *de novo*. *Etefia v Credit Technologies, Inc.*, 245 Mich App 466, 469; 628 NW2d 577 (2001), citing *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998); *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

In considering a question of statutory construction, this Court begins by examining the language of the statute. We read the statutory language in context to determine whether ambiguity exists. If the language is unambiguous, judicial construction is precluded. We enforce an unambiguous statute as written. Where ambiguity exists, however, this Court seeks to effectuate the Legislature's intent through a reasonable construction, considering the purpose of the statute and the

object sought to be accomplished. [*Macomb Co Prosecutor v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001) (citations omitted).]

The fact that the Legislature has omitted the definition of a word that has a common usage does not create ambiguity. *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). In this event, a court may establish the meaning of a term through a dictionary definition. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 568; 519 NW2d 864 (1994).

In the instant case I would find that the term "cooperated," in the context of this statute, is unambiguous. As noted by the majority, the words "cooperate" and "cooperation" have ordinary and generally accepted meanings. The statute plainly seeks to create an eligibility for early parole release for only those prisoners who have "worked" or "acted willingly" with law enforcement officers toward the common purpose of law enforcement. Stated another way, those prisoners who in the past provided information to law enforcement that could be legitimately used to investigate criminal activity are granted by the Legislature in MCL 791.234(10) a special eligibility for parole. The fact that the circumstances under which such cooperation can occur are varied and multiple, requiring a case-by-case analysis to determine whether a particular prisoner qualifies to be eligible for early parole release, does not in my view render the term "cooperated" ambiguous. See, e.g. *People v Philabaun*, 461 Mich 255, 263; 602 NW2d 371 (1999); *People v Vasquez*, 240 Mich App 239, 244; 612 NW2d 162 (2000), rev'd on other grounds 465 Mich 83; 631 NW2d 711 (2001)(whether conduct fits within a statute should be decided case by case with special attention to the facts). This is particularly true where the Legislature has used the term "cooperation" in three other statutes without providing any statutory definition. See MCL 400.239, 500.2446, and 500.2640.

## II

I also disagree with the majority's conclusion that the Legislature placed no temporal limitation on the determination whether a prisoner has cooperated with law enforcement. In interpreting statutory language, every word should be given meaning, and no word, if at all possible, should be treated as surplusage or rendered nugatory. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999); *Camden v Kaufman*, 240 Mich App 389, 395; 613 NW2d 335 (2000). Three phrases chosen by the Legislature are powerful indicators of the intent of the legislation. The statute requires that the prisoner "*has* cooperated with law enforcement," and notes the prisoner "*is considered to have* cooperated with law enforcement" in absence of certain conditions. Further, "[i]f the court determines at sentencing that the defendant *cooperated* with law enforcement," then eligibility is established.

The fact that the Legislature did not state a precise time by which the cooperation was to have occurred does not, in my view, render the statute ambiguous because the words "has" and "have," as used in these phrases, are present perfect tense verbs. Garner, *A Dictionary of Modern American Usage* (New York: Oxford University Press, 1998), p 645. Present perfect is defined as "of, pertaining to, or being a verb tense or form indicating that the action or state expressed by the verb *was completed prior to the present or that it extends up to or has results continuing up to the present.*" *Random House Webster's College Dictionary* (2nd ed, 1997), p 1030 (emphasis added). Giving the phrases "has cooperated" and "have cooperated" their plain meaning, then, it is clear that the Legislature intended that the prisoner's cooperation must have occurred at some

time before the prisoner's application for parole release under MCL 791.234(10). Similarly, the phrase "had no relevant or useful information to provide", when given its plain meaning and considered in relation to the present perfect tense clause "have cooperated," expresses the Legislature's intent that the prisoner must have lacked information before the prisoner's application for treatment under MCL 791.234(10), in order to be found as a matter of law to have cooperated.

Under the statute, then, the offer of "stale" information in an attempt to qualify for treatment under MCL 791.234(10) would fail if the evidence established that the prisoner possessed the information and could have offered it to law enforcement when it was not stale, i.e., relevant and useful, but did not do so. Such a determination must be made in the first instance by the lower court and is a factual determination that we should not disturb unless there is clear error. *People v Fields*, 448 Mich 58, 76; 528 NW2d 176 (1995). In the present case, the lower court found that defendant's offer to cooperate was not the equivalent of actual cooperation. This finding is not clearly erroneous, and I would affirm the decision of the lower court. Defendant's motion for judicial determination established, at best, merely a future, *stated willingness* to cooperate with law enforcement. The only evidence before the lower court at the time of the motion was defendant's "offer" to cooperate in the form of defense counsel's letter to the prosecutor. This letter fails to establish either that defendant had already cooperated with law enforcement *or* that at no time before the motion did defendant have relevant or useful information to provide. Because the evidence presented to the lower court at the time of the motion was insufficient to establish cooperation as required by the statute, remand to the trial court for an evidentiary hearing is not warranted. See, e.g., *People v Arenda*, 416 Mich 1, 14; 330 NW2d 814 (1982) (absent an offer of proof an appellate court can only speculate about the existence of relevant evidence); *People v Ginther*, 390 Mich 436, 443-444; 212 NW2d 922 (1973) (remand is appropriately denied where the defendant fails to demonstrate by affidavit or offer of proof that the type of factual record that is required before an issue can be decided by this Court could be developed).

For the foregoing reasons, I would affirm the lower court's denial of defendant's motion for judicial determination of cooperation.

/s/ Kurtis T. Wilder